CHIEF SECRETARIAT

(GENERAL ADMINISTRATION DEPARTMENT)

Notification dated 29th October 1971.

No. GAD 123 INS 71. The final Inter-State Seniority list of Non-Gazetted Officcers of Public Works Department in the cadre of Junior Engineers has been published in accordance with the decisions of Government of India in Part III-I of the *Mysore Gazette* dated 30th December 1968 under Notification No. GAD 32 INS 68, dated 26th December 1968. Aggrieved by the equation of posts decided by the Government of India, Sriyuths Mohamed Ali Tahir and Chinnanna filled Writ Petition No. 6572 of 1969 in the Mysore High Court. The High Court disposed of the Write Petition on 1st September 1971. The Judgment of the High Court is annexed.

2 The petitioners and all those who are likely to be affectede by the final decisions that may be taken by the Government of India may submit their representations in *Six sets* addressed to the Secretary to the Government of India, Department of Personnel, Cabinet. Secretariat, North Block, New Delhi, through the Chief Engineer (Communication and Buildings), Public Works Department, Bangalore, within one month from the date of publication of this Notification in the Mysore Gazette, for consideration and decision by the Government of India in terms of the judgment of the High Court.

By Order and in the name of the President of India,

B. P. PATIL,
Deputy Secretary to Govt., General Admn. Dept., (Integration).

Annexure to Notification No. GAD 123 INS 71 dated 29th October 1971.

IN THE HIGH COURT OF MYSORE AT BANGALORE

Dated the 1st day of September, 1971.

Present :

The Hon'ble Mr. A. Narayana Pai, Chief Justice

and

The Hon'ble Mr. Justice M. S. Nesargi

Writ Petition Number 6572 of 69.

Mohammad Ali Tahir, S/o B. M. Tahir, No. 5, Anjanappa Lane, Old- Pension Mohalla, Mysore Road, Bangalore-18.

Chinnanna, S/o Motappa Kaval Byrasandra, Banagalore-6. (By Sri M. Rama Jais)

Vs.

Petitioners.

Union of India by its Secretary, Ministry of Home Affairs, New Delhi,

The State of Mysore, by its Chief Secretary, Vidhana Soudha, Bangalore-1. *Respondents.*

(By Shri R. S. Mahendra, H.C.G.P. for Respt. 2, Shri B. Ramachandra Rao, Senior Standing Counsel for Central Government for Respt. 1)

Writ Petition under Article 226 of the Constitution of India with an affidavit praying that in the circumstances stated therein this Court may by pleased to quash the Notification No. GAD 32 INS 68, dated 26th December 1968 issued by the Respondent No. 2 in so for as it relates to the equation of sub-Engineers and Overseers of former State of Mysore, permanent and temporary, Non-Graduate Overseers of Bombay, Non-Graduate Supervisors of Hyderabad, Non-Graduate Supervisors of Madras and Non-Graduate Section Officers of Coorg in Category II in the statement shewing the final equation of posts as decided by the Government of India etc.

This Writ Petition comming on for hearing this day, Chief Justice made the following:—

ORDER

This is a petition under Article 226 by two Officers of the Public Works Department, allottees from the erst while State of Mysore to the New State of Mysore under the States, Reorganisation Act, praying for the issue of appropriate writs for the quashing of the equation of posts made for purposes of integration falling within the category of Junior Engineers and for re-doing the same in accordance with law.

2 The final Inter-State Seniority list dated the 26th of December 1968 incorporating the impugned equation sets out the same at the end as Category II. In the said category are set out the several posts which are equated for purposes of integrating service personnel coming from different integrating areas and settling their inter-state seniority. The posts listed as equated are the following:—

" Supervisor, Mysore (Rs. 116-200)
Sub-Engineer, Mysore (Rs. 150-200)
Overseer, Mysore (Rs. 100-150)
Graduate Overseer, Bombay (140-270)
Permanent and Temporary Non-Graduate Overseer, Bombay (Rs. 80-270)
Graduate and Non-Graduate Supervisor, Hyderabad (Rs. 176-300 and Rs. 140-300)
Junior Engineer, Madras (Rs. 150-250)
Non-Graduate Supervisor, Madras (Rs. 100-250)
Graduate Section Officer, Coorg (Rs. 140-250)
Non-Graduate Section Officer, Coorg (Rs. 100-250). "

The nature and the limits of judicial review in matters of this nature are explained in the judgment of this Court in the case of Dharmaraj *vs.* Union of India (1970 (2) Mysore Law Journal, page 184). It is pointed out therein that equation of posts has to be done on the basis of four principles formulated by the meeting of Chief Secretaries which have issued in the form of directions under Section 117 of the States' Reorganisation Act. Those principles are :

" That in determining the equation of posts the factors to be borne in mind are :

(i) The nature and duties of a post ;

(ii) The responsibilities and powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged ;

(iii) The minimum qualifications, if any, prescribed for recruitment to the post :

(iv) The salary of the post."

What the Court pointed out in the said decision is that the integrating authority the Central Government should apply its mind to the necessity of applying the four principles to the determination of equation posts, that the decision must be arrived at on an application of all the four principlesand not one or more of them to the exclusion of others, and that no irrelevant considerations *i.e.* consideration other than those falling within the scope of the four-principles, are permitted to operate. As the Central Government acts upon the advice of a Committee called the Advisory Committee constituted for the said purpose, the investigation by a Court is directed towards the question whether there is in the report of the Advisory Committee, on which the Central Government has acted, sufficient evidence of the aplication of the mind to the circumstances and the principles mentioned above.

3. The counsel on behalf of the Central Government and State Government have placed before us the relevant proceedings of the Advisory Committee. Before referring to the same, it is necessary to make a brief reference to certain previous decisions of this Court bearing upon the controversy now-before us.

4. Briefly stated the position in the case of officers with whom we are now concerned was that whereas in the erstwhile State of Bombay, there was a single seniority list of graduates as well as non-graduates, in the other integrating areas, *viz.*, Mysore, Madras, Hyderabad and Coorg, the graduates, were placed in a list distinct and different from the list of non-graduates and the graduates was always treated as of superior status and, therefore, in a senior or higher category. There was also a clear and large difference between the promotional opportunities of graduates and those of non-graduates.

5. In the earlier stages of preparation of Inter-State seniority lists after the Reorganisation of States as on 1st November 1956, what were called preliminary or draft lists were prepared by different departments. Those were called Departmental lists. Later, the State Government, under the instructions of the Central Government, used to publish what was called a provisional inter-state seniority list. In the earliest of the lists or departmental lists, the distinction between graduates and non-graduates was maintained or indicated; and in accordance with the pattern which prevailed in all the integrating areas and non-graduates going into the non-graduates' categories of other integrating areas.

6. One Narayana Murthy, who was a non-graduate allottee from Bombay, filed Writ Petition No. 1431 of 61 questioning the said splitting of the combined cadre of graduate and non-graduate overseers of Bombay. The Court accepted his grievance to be warranted and quashed the relevant notification of the State Government to the extent it operated to bring about a division in the cadre of Overseers from the Bombay area, and directed that the State Government will make a fresh equation as may be necessary, on an appropriate and valid basis and in accordance with such directions as the Government of India, might have issued in the matter

7. The order of this Court is reported on page 435 of 1965 (1) Mysore Law Journal.

8. In Writ Petition No. 2139 of 63 filed by temporary non-graduate overseers from Bombay area and Writ Petition No. 68 of 1965, filed by non-graduate supervisors of Madras, the previous decision was referred to and followed. Similar order was made in W. P. No. 2399 of 63 filed by four non-graduate supervisors from Hyderabad.

9. It was however, pointed out in effect, that the ultimate decision must be taken by the Central Government as the integrating authority having, under the States' Reorganisation Act, exclusive jurisdiction of integrating services under Section 115 of the said Act.

10. Graduates of old Mysore sought review of all these orders on the ground that they had not been made parties to the said Writ Petitions and had not been heard before orders adverse to their interests were made in the said Writ Petitions.

11. In the petition filed for review of the order in Writ Petition No. 2399 of 63, a preliminary order was made recalling the previous order and directing further proceedings thereon.

12. In other cases, however, review was refused on the ground that the petitioner (in the review petition) cannot be regarded as a necessary part to the previous Writ Petitions. In one of the orders dated the 27th of June 1969 the Court has stated that in petitions raising questions relating to equations for the purposes of inter state seniority list, only the State Government, which was acting under the directions of the Central Government for the purpose, would be a necessary party, and proceeded to observe as follows :—

> " We are told that the Central Government has since published the final inter-state seniority list of junior Engineers. If the petitioner is aggrieved by the rank assigned to him therein, it is open to him to challenge the same in appropriate proceeding and if necessary, substantiate therein the law as stated in W.Ps. 1431/61 and 68/1965 (to which he was not a party) is not correct ".

13. The last observation makes it perfectly clear that the Court has stated or may state with reference to a provisional list is not so completely binding and final as to prevent a departure therefrom for good grounds at the time of finalising the inter-state seniority list. We might also point out that in an earlier decision of a Bench of this Court reported in A.I.R. 1962 Mysore, page 112 (Shankar Ganesh Joshi and others *vs.* State of Mysore), it was pointed out that a provisional inter-state seniority list, prepared whether by the State Government or by any of its Departments, was not more than mere material for the integrating authority the Central Government in preparing an inter-state seniority list, that any objections to the said list persons aggrieved by the equation suggested by its or even a case of departure from binding instructions of the Central Government as the integrating authority, should be presented to the Central Government, that it was not proper for the aggrieved party to approach a High Court under Article 226 and that it is best for the Court not to interfere at the stage of provisional integration at all.

14. We may now look into the relevant portions of the proceedings of the Advisory Committee in this case. The proceedings contain a detailed reference to the differences in regard to categorisation of officers in the various integrating areas and then refers to the various writ petitions already mentioned by us above. Ultimately the committee says :

> " It can be seen from the above that while in Bombay, Hyderabad and Madras, there was only one common seniority list for two Officers holding the post with duties of supervisors or Overseers; there was separate seniority list for such Officers in Mysore based on educational qualifications possessed by the Officers. The committee considered whether the pattern in Mysore could be adopted and two lists of Overseers based on educational qualifications of the Officers prepared. It considered that such a course of action would not only be open to objection on the ground brought out in the judgment of the High Court and would not also be quite appropriate in the new set up. The Government of every integrating unit did make a distinction between graduates and non-graduates in the matter of promotion to higher cadres. They stipulated certain particularly onerous condition for the promotion of Non-Graduates. But, that also could be effected even within the frame work of a single seniority list of such officers. The Committee, therefore, considered that in respect of the Officers in the new set up in Mysore also a single seniority list of all Officers holding the post of Overseers and Supervisors by whatever designation they may be called should be prepared."

15. The paragraph cited above contains what may be regarded as the decision of the Committee. In the earlier part of the proceedings, as already stated, there is only a summary of facts and the decisions of this Court. There is no reference to the necessity of applying the four principles before deciding upon the equation of posts nor is there any evidence of the said principles having been applied in coming to the final conclusion that there should be a single list of both graduates and non-graduates. The paragraph cited above also makes it clear that the Committee was proceeding upon the footing that what has been stated by this Court in the earlier Writ Petitions was in the nature of a decision with some finality attached to it, which, for the reasons already indicated by us and already expressed by this Court in earlier cases, is not the correct view to take. We might also point out that the statement in the first sentence in the above extract that there were two lists only in Mysore and not in other integrating areas, is not correct on facts. Both Hyderabad and Madras had separate lists. This fact, however, was not brought to the notice of this Court in the earlier writ petitions but could not in our opinion, have been beyond the scope of enquiry or actual knowledge on the part of the Governments themselves.

16. For all these reasons, there is no alternative but to hold that the equation now impugned has been arrived at without acting upon and applying the four principles expressly laid down for purposes of equations.

17. But, before making our final order in this case, it is necessary to deal with one matter, *viz.*, the or necessity otherwise of impleading other persons in matters of this nature and the grounds, if any, on which review may be claimed or granted.

18. It is now well settled in this court that where the review of a decision in a Writ Petition is sought by a person, who had not been impleaded therein, he should first establish that he was a necessary party, in the sense that the decision in the previous Writ Petition affects his interests adversely and that, therefore, it should not have been taken without first giving him an opportunity of being heard, and that if he establishes that position, the previous order should be recalled, new party impleaded and the entire Writ Petition heard again after giving opportunity to all parties to file further affidavits, if necessary.

19. In cases of this nature where the equations of posts alone in the course of integration is questioned, the limit of judicial review, as already set out in Dharmaraj's case, makes it impossible for this Court to come to any final decision on the question of equation, much less a decision adverse to any party. At the preliminary or provisional stage, as already stated, this Court will never interfere with provisional equation. At the final stage, all that this Court can examine is whether the integrating authority has applied its mind to the necessity of applying the four principles, and acted upon those principles. If the integrating authority had in fact applied its mind and come to a conclusion on the question of equation after applying those principles, there is no more any jurisdiction for this Court to interfere with that equation. Where this Court finds that there has not been such application of the mind on the part of the integrating authority, all that it can do is to quash the equation and ask the integrating authority to re-do the equation after giving an opportunity to all persons concerned and likely to be affected, of making representations.

20. So far as the final list based on the equation is concerned, the quahing of the equation or even the list itself will not have any immediate effect upon the administration because, as pointed out by this Court in the case of Kyategowda vs. State of Mysore 1970 (2) Mysore Law Journal, page 407, the final list will continue to be the current list for day-to-day administration until it is replaced by a corrected list. The final corrected list be published until, according to the directions issued in the appropriate writ, all the persons affected are given an opportunity of making representations. Hence, there is no question of any decision adverse to any party being taken without his being given opportunity of making representations within the frame work of the Statute.

21. Hence, there is no question of anybody being heard and much less, therefore,entitled to ask for review of decisions in writ petitions of this nature.

22. We, therefore, issue a Writ quashing the impugned equation of posts set out as category No. II in the final inter-state seniority list of Non-Gazetted Officers of the Public Works Department in the Cadre of Junior Engineers as on 1st November 1956, published in Notification No. GAD 32 INS 68, dated 30th December 1968, in the *Mysore Gazette* (Extraordinary) dated 30th December 1968, and directing the Union Government as the integrating authority to re-do the equation after giving an opportunity to the petitioners and all persons likely to be affected by the ultimate decision of the Central Government, of making representations.

23 Time nine months.

Sd. A. NARAYANA PAI,
Chief Justice.

Sd. M. S. NESARGI,
Judge.